

Amendment No. 1:

Shall the Town amend the Zoning's Ordinance as proposed by the Planning Board as follows?

To make numerous changes to Article 27 (Cluster Housing) and Article 14 (Lot Sizing) to further define community; requiring a yield plan to demonstrate total of lots achievable; reducing the front setback; eliminating the maximum bedroom requirement of 3 and requiring the open space to be protected by permanent recreation and conservation easements.

Purpose: The above explains the purpose of this amendment and below shows the articles and how each article will read as a result of the vote. The words that have the strikethrough will be removed and the bold is what is being added.

ARTICLE 27

27.1 **CLUSTER HOUSING**

27.2 **PURPOSE AND INTENT:** The purpose of cluster development, and to which purpose any such development must adhere, are the following:

27.2.1 To promote the conservation of the natural environment and the development of community uses in harmony with the natural features of the land.

27.2.2 To establish living areas within the Town that provide for a balance of community need such as diversity of housing opportunities, adequate recreation and open space areas, easy accessibility to these and other community facilities, and pedestrian and vehicular safety.

27.2.3 To provide for an efficient use of land, streets, and utility systems.

27.2.4 To stimulate new approaches to community development **that achieve the above purposes and intent.**

27.2.5 **For the purposes of this article “community” is defined as the interacting population of various locations and subdivisions intended to represent the Town of Weare and its citizens.**

27.3 **REQUIREMENTS**

27.3.1 Cluster developments **may** shall be permitted **or required** in the Residential (R) and Rural Agricultural (RA) Districts. **After consultation and recommendation by the Conservation Commission, the Planning Board may require that a subdivision be proposed as a cluster development.**

- 27.3.2 The tract of single or consolidated ownership at the time of application shall be at least 15 acres in size and shall be subject to approval by the Planning Board whether or not the land is to be subdivided. Otherwise by Special Exception.
- 27.3.3 The **maximum** number of dwelling units per ~~project~~ **cluster development** shall ~~comply with minimum lot size density requirements of Table 1-1.~~ **be determined by the maximum number of non-cluster lots that could be subdivided in accordance with the requirements of Article 14.2 Table 1-1 and all other requirements in this ordinance and the Town of Weare Subdivision Regulations for non-cluster subdivision. The applicant shall present a yield plan to demonstrate the number of conventional lots achievable.**
- 27.3.4 Cluster housing to consist of no more than one (1) single dwelling unit per building.
- 27.3.5 Internal streets are to meet the Town/State specifications. **Proposed roads within the cluster may be reduced to 20 feet in width if appropriate to achieve a neighborhood scale and if deemed appropriate by the Board for the anticipated amount of traffic.**
- 27.3.6 Within cluster, the following setbacks are required:
1. Set back - ~~fifty (50)~~ **twenty five (25)** feet from right-of-way.
 2. Setback - fifty (50) feet between buildings for fire and emergency vehicle access.
 3. Frontage - minimum of twenty-five (25) feet of frontage on a street shall be required per dwelling unit.
- 27.3.7 All parking within the cluster development shall be provided in paved off-street locations at a ratio of not less than two (2) spaces per dwelling unit
- 27.3.8 ~~No dwelling unit shall contain more than three (3) bedrooms.~~ **The minimum lot size in a cluster development shall be determined by the State of New Hampshire residential lot standards.**
- 27.3.9 Buffer strips: Cluster housing **including all dwellings, garages, sheds, roadways, driveways, fuel tanks, vehicles and playground equipment** shall not locate within one hundred (100) feet of the property line of any other residential property and shall provide and maintain a strip of nativized plantings along and within the buffer strip. **Building lots within a cluster development may include a portion of the buffer strip within the lots provided that each lot containing a portion of the buffer shall have a deeded protective easement describing the buffer area as a protected “no disturbance” zone.**

- 27.3.10 The development shall be served by central sewerage **and central wells where practicable.** ~~Central wells are required in all developments of 15 or more dwelling units.~~ Where cluster developments **development lot sizes** can meet minimum NH Water Supply and Pollution Control Division standards individual septic systems and wells **may** ~~shall~~ be allowed by Special Exception.
- 27.3.11 At least fifty percent (50%) of total tract area exclusive of public right-of-ways shall be set aside as open space uses covenanted to be maintained as permanent "open space" in private, ~~or~~ cooperative **or** non-profit ownership. Open space within a cluster development shall be protected by **permanent** recreation and conservation easements **held by the town, a qualified conservation organization or an agency of state government** ~~and shall be maintained as permanent open space.~~ Such common land shall be restricted to open space uses. Such common land shall have suitable access to a street. ~~Open space acreage shall be contiguous to the greatest extent possible.~~ **The design and layout of all cluster developments should protect as open space to the greatest extent possible those portions of the lot having the highest conservation value. Factors for determining the conservation value shall include but not limited to wetlands, riparian corridors, viewsheds, abutting tracts of open space or undeveloped land, recreational value, steep slopes, prime agricultural soils and/or other unique natural features. Open space layouts should generally seek to create large contiguous blocks of undeveloped and protected lands to the greatest extent possible.**
- 27.3.12 A site plan for the entire tract shall be prepared by a registered professional engineer or registered land surveyor. The site plan shall be submitted in accordance with the regulations for the Town of Weare and the location of parks and open space shall be shown on the plan.
- 27.3.13 A performance bond and other legal data shall be submitted as required by the Planning Board to insure the completion of streets, buffers, and amenities in accordance with the accepted plans and the regulations of the Town of Weare as adopted or hereinafter amended.
- 27.3.14 The Planning Board shall adopt such procedures as part of the regulations as it may deem necessary in order to insure sufficient public review of any cluster proposal and to insure compliance with these and other town ordinances and regulations.

ARTICLE 14

- 14.1 **LOT SIZE REGULATIONS:** Land on Class V streets with gravel surface which are maintained by the Town, may be subdivided with a minimum

lot size of 10 acres. Land on Class V streets with a paved surface shall follow the lot size table in Article 14.2.

- 14.2 This article shall apply: (a) to any use in the Residential (R) District and in the Rural/Agricultural (RA) District and (b) to any use involving housing (but excluding hotels and other housing for transients) in the Commercial (C) District and in the Industrial (I) District. The minimum lot size shall be based upon the percentage of property included in each soils/slope type shown in table 1-1. When determining lot size, the entire area used to calculate size must be non-wetland soils. For definition of wetland, see Article 28.

TABLE 1-1 FOR "MINIMUM LOT SIZE"
LOT SIZES IN SQUARE FEET

SLOPE CLASS	SLOPE	SOIL CLASSIFICATION				
		1	2	3	4	5
AB	0-8%	84,000	93,000	102,000	97,000	144,000 (2)
C	8-15%	87,000	97,000	107,000	102,000	N/A
D	15-25%	90,000	101,000	116,000	106,000	N/A
E	25-35%	93,000	104,000	126,000	111,000	N/A

- (1) A Site Specific Soil Survey, as defined by the Hillsborough County Conservation District (HCCD) may be required for all lots in which Class 5 soil types predominate.
- (2) Where ~~cluster~~, condominiums, duplex or multi family housing is proposed the requirements of Table 1-1 shall apply, for each dwelling unit. For the purposes of this section, dwelling accessory attached apartment (in-law apartment) shall not be considered a separate dwelling unit. To determine the number of permissible units the applicant shall provide a Site Specific Soil Survey and topographic map of the property. The maximum number of dwelling units shall be based on the percentage of the property included in each soil/slope type shown in TABLE 1-1. The total area of each soil type shall be divided by the minimum lot sizes shown in the Table to determine the number of dwelling units permitted for each soil type area. For purposes of calculating maximum number of dwelling units, one dwelling unit shall be permitted for each four acres of wetland district or Class 6 soils on the property.
- (3) **Where a cluster development is proposed, the requirements of Table 1-1 shall apply and a yield plan shall be presented to demonstrate the maximum number of conventional lots achievable, which shall then be the number of cluster dwelling units allowed.**

Amendment No. 2:

Shall the Town amend the Town's Zoning Ordinance, as proposed by the Planning Board as follows?

To add the following definition in Article 4 to read:

Yield Plan – A “traditional subdivision” plan showing the maximum number of building lots possible, providing an appropriate roadway system and taking into consideration the existing site conditions, including but not limited to, topography, wetlands, steep slopes and site access.

Purpose: As part of the change in amendment no. 1 it is mentioned that the applicant must provide a yield plan, but there currently is no definition for a yield plan. This amendment would add a definition for a yield plan to the zoning ordinance.

Amendment No. 3:

Shall the Town amend the Zoning's Ordinance as proposed by the Planning Board as follows?

To change Article 15 to insert a phasing table for all subdivisions, condominiums and multi-family housing of 4 dwelling units or greater and to add Article 15-A entitled “Growth Management Ordinance” with a purpose to promote and ensure orderly development with a sunset date of 2010.

Purpose: This amendment will require all major subdivisions (4 lots or more) to be phased in according to the table below. This table was created in an effort of keeping the supply line constant. If the supply line is kept constant then the building permits should be kept constant as well. This amendment is the one that was put forth by the Planning Board. Below shows the articles and how each article will read as a result of the vote. The words that have the strikethrough will be removed and the bold is what is being added.

ARTICLE 15

15.1 **PHASING OF DEVELOPMENT**

15.1.1 **PURPOSE:** The purpose of phasing development is to prevent a strain on municipal resources caused by the sudden introduction of many new dwelling units.

15.1.2 **All residential subdivisions, condominiums and multi-family housing of 4 dwelling units or greater shall be subject to phasing in accordance with TABLE 1-2 below:**

Total dwellings	Building permits
4 to 10	5 per year
11 to 18	6 per year
19 to 28	7 per year

29 to 40	8 per year
41 to 54	9 per year
55 or more	10 per year

TABLE 1-2 FOR RESIDENTIAL DEVELOPMENT PHASING

The table illustrates the maximum number of available building permits per development per calendar year approved under this article. Surplus permits in any given year shall not be added onto the number of permits available in the following year.

~~The Planning Board may require the phasing of future developments as required in RSA 674:21 as follows:~~

- ~~1. The Planning Board may require the phasing of a development for a period up to five years for a project which is proposed to have between 4 and 75 dwelling units. The Planning Board is entitled to negotiate a longer period of phasing based on the size of the project and the potential impact of the number of units on the Town.~~
- ~~2. Once phasing plan has been approved by the Planning Board, that project shall not be affected by any permit limitations subsequently enacted under the provisions of this ordinance, construction on the units in each calendar year phase. In the event that substantial construction is not undertaken in any calendar year phase, then the vesting of that phase shall be lost and the developer shall be subject to any limitations imposed by subsequently enacted provisions.~~

~~Once a phasing plan is approved by the Planning Board with dates of allowed construction in each phase, the approved plan shall be filed with the Hillsborough County Registry of Deeds bearing the signature of the Planning Board Chairman signifying approval.~~

ARTICLE 15-A

15-A.1 GROWTH MANAGEMENT ORDINANCE

15-A.2 AUTHORITY: This Growth Management Ordinance is enacted pursuant to the authority granted under RSA 674:22.

15-A.3 PURPOSE AND INTENT: The Growth Management Ordinance is adopted to promote and ensure the orderly development of land within the Town of Weare; to promote public health, safety and welfare or its residents; and for the following specific purposes:

- A. To provide the Town of Weare adequate time to develop new zoning ordinances that reflect the Master Plan and Capital Improvements Program.
- B. To manage the timing of new residential development in a reasonable and responsible manner.
- C. To allow the Town adequate time to provide the school capacity and municipal services made necessary by residential development.
- D. To allow the Town to conduct a cost of community services study as a guide to future land use policy.
- E. To ensure that the Town continues to enjoy the high quality of life provided by its clean water, clean air, rural character and sense of community.

15-A.4

FINDINGS OF FACT: Since 1990, the town of Weare has grown at a faster rate in both population and number of dwelling units than the average of the seven abutting communities of Hopkinton, Henniker, Francestown, New Boston, Deering, Goffstown and Dunbarton. This consistent “outpacing” of regional development puts an undue burden upon the town to provide adequate services for its population.

Town	1990 dwellings	2002 dwellings	% increase
New Boston	1,138	1,605	41.0%
Deering	757	966	27.6%
Dunbarton	685	908	32.6%
Weare	2,417	2,992	23.8%
Goffstown	5,022	5,902	17.5%
Francestown	580	681	17.4%
Hopkinton	1,924	2,257	17.3%
Henniker	1,558	1,735	11.4%
	12,943	15,441	19.3%

Town	1990 population	2003 population	% increase
New Boston	3,214	4,643	44.5%
Dunbarton	1,759	2,442	38.8%
Weare	6,193	8,314	34.2%
Francestown	1,217	1,553	27.6%
Goffstown	14,621	17,354	18.7%
Hopkinton	4,806	5,579	16.1%
Deering	1,707	1,966	15.2%
Henniker	4,151	4,762	14.7%
	34,454	41,970	21.8%

- 15-A.5 **ENACTMENT:** As of the adoption of this ordinance, the town of Weare shall limit the number of building permits for year round homes available on newly created lots in major subdivisions or in condominium and multifamily developments of 4 dwelling units or greater. For the purpose of this article, major subdivisions shall be defined as the creation of more than three lots, including the parent parcel, as of the date of adoption of this ordinance. The total number of permits available for homes in phased developments in any calendar year shall not exceed 2.0% of the total number of dwelling units in existence in the town as of December 31st of the preceding year. The Planning Board shall adopt rules governing the calculation and notification of available permits for each year.
- 15-A.6 **APPLICABILITY:** All residential development applications of 4 dwelling units or greater, including single family homes, duplexes, condominiums and multifamily housing, accepted after March 14, 2005 shall be subject to the permit limitations. This ordinance shall not apply to minor subdivisions, prior approved and vested subdivisions, subdivision applications that have been formally accepted as complete prior to the adoption of this ordinance, non-residential subdivisions or existing lots of record.
- 15-A.7 **EXPIRATION:** This Growth Management Ordinance shall be annually reviewed by the Planning Board to determine its effectiveness and suitability. The Planning Board shall hold at least one public hearing between September 1 and November 30 and shall vote to reinstate or repeal this ordinance for the following year. Failure to do so will result in the expiration of this ordinance on the next anniversary of its adoption. In any case, this ordinance shall expire in 2010 on the anniversary of its adoption unless re-enacted by the voters.
- 15-A.8 **CONFLICTS:** Where any provision of this ordinance imposes restrictions different from those imposed by any other ordinances of the Town of Weare or any other rule or regulation or other provision of the law, whichever provision is more restrictive or imposes higher standards shall control.

Amendment No. 4:

Shall the Town amend the Zoning's Ordinance as proposed by the Planning Board as follows?

To add a section 31.1.1 of Article 31 to read, "This ordinance, adopted pursuant to the authority of RSA 674:16, shall be known as the "Town of Weare Floodplain Development Regulations."

Purpose: Amendments 4 through 8 have to do with some changes that Southern NH Planning Commission request that we make to be compliant with the National Flood Insurance Program. These necessary changes have to do with the effectiveness of local floodplain management ordinances and enforcement practices. They are being recommended on behalf of Federal Emergency Management Agency (FEMA), the NH Office of Emergency Management (NHOEM) and NH Office of Energy and Planning (NHOEP).

Amendment No. 5:

Shall the Town amend the Town's Zoning Ordinance, as proposed by the Planning Board as follows?

To add a section 31.3.21.1 to Article 31, which defines "new construction" as follows: "New construction: for the purposes of determining insurance rates, structures for which the start of construction commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures."

Purpose: This is another amendment being recommended by Southern NH Planning Commission, as stated above.

Amendment No. 6:

Shall the Town amend the Town's Zoning Ordinance, as proposed by the Planning Board as follows?

To add a section 31.7.4 to Article 31 which states "The Building Inspector shall maintain the aforementioned information for public inspection, and shall furnish such information upon request."

Purpose: This is another amendment being recommended by Southern NH Planning Commission, as stated above.

Amendment No. 7:

Shall the Town amend the Town's Zoning Ordinance, as proposed by the Planning Board as follows?

To insert the following phrase to section 31.10.2.2, "or together with attendant utility and sanitary facilities, shall:"

Purpose: This is another amendment being recommended by Southern NH Planning Commission, as stated above.

Amendment No. 8:

Shall the Town amend the Town's Zoning Ordinance, as proposed by the Planning Board as follows?

To replace the text of section 31.11.2 with the following: “If the applicant, upon appeal, requests a variance as authorized by RSA 674:3, I (b), the applicant shall have the burden of showing in addition to the usual variance standards under state law that:”

Purpose: This is another amendment being recommended by Southern NH Planning Commission, as stated above.

Amendment No. 9:

Shall the Town amend the Town’s Zoning Ordinance, as proposed by the Planning Board as follows?

To delete Article 6.1.3 entitled “Interpretations” and re-number the remainder of the articles.

Purpose: This amendment is proposed by the Zoning Board of Adjustment as a house cleaning item. The proposal would eliminate the following section:

6.1.3 INTERPRETATIONS: The Zoning Board of Adjustment shall hear and decide appeals if it is alleged there is error in any order, requirement, decision or determination made by the Board of Selectmen or its appointed agent, in the enforcement of this ordinance.

Amendment No. 10:

Shall the Town amend the Town’s Zoning Ordinance, as proposed by the Planning Board as follows?

To change the title of Article 3.4 from Non-Conforming Use of Property to Rights of Vesting and Non-Conforming Use of Property.

Purpose: This amendment is proposed by the Zoning Board of Adjustment as a house cleaning item. The proposal would change the title of the following section:

3.4 NON-CONFORMING USE OF PROPERTY:

Amendment No. 11:

Shall the Town amend the Town’s Zoning Ordinance, as proposed by the Planning Board as follows?

To change the following definition in Article 4 to read:

Abutter: as defined in RSA 672:3

Purpose: This amendment is proposed by the Zoning Board of Adjustment as a house cleaning item. Upon advice from Town counsel, it was suggested that our ordinance not try to mimic the State law, but just reference it. The reason being is that if the State law changes, we don’t have to continually come back to the voters for approval of the change. The proposal would change the definition as follows (the strikethrough is what is being eliminated and the bold is what is being added.)

ABUTTER: ~~Shall mean any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the~~

~~local land use board.~~ **As defined in RSA 672:3**

Amendment No. 12:

Shall the Town amend the Town's Zoning Ordinance, as proposed by the Planning Board as follows?

To change the following definition in Article 4 to read:

Variance: shall mean such departure from the terms of the zoning ordinance, applied to use or area, as will not be contrary to the public interest, if owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

Purpose: This amendment is proposed by the Zoning Board of Adjustment as a house cleaning item. The proposal would add the following words that are in bold print to the existing definition, so the definition would read as follows)

VARIANCE: Shall mean such departure from the terms of the zoning ordinance, **applied to use or area**, as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

Amendment No. 13:

Shall the Town amend the Town's Zoning Ordinance, as proposed by the Planning Board as follows?

To change the following article 6.1 to read "Zoning Board of Adjustment: shall be empowered to act pursuant to RSA 674:33."

Purpose: This amendment is proposed by the Zoning Board of Adjustment as a house cleaning item. Upon advice from Town counsel, it was suggested that our ordinance not try to mimic the State law, but just reference it. The reason being is that if the State law changes, we don't have to continually come back to the voters for approval of the change. The proposal would change the definition as follows (the bold is what is being added.)

6.1 **ZONING BOARD OF ADJUSTMENT:** **shall be empowered to act pursuant to RSA 674:33.**

Amendment No. 14:

Shall the Town amend the Town's Zoning Ordinance, as proposed by the Planning Board as follows?

To change the following article 6.1.2 to read "Rules of Procedure: The Zoning Board of Adjustment: shall adopt Rules of Procedure pursuant to RSA 676:1 and in accordance with RSA 673.

Purpose: This amendment is proposed by the Zoning Board of Adjustment as a house cleaning item. The proposal would add the following words that are in bold print and

eliminated the words with the strikethrough to the existing article, so the article would read as follows)

- 6.1.2 ~~ADOPTION OF RULES OF PROCEDURE~~: The Zoning Board of Adjustment shall adopt **Rules of Procedure pursuant to RSA 676:1 and in accordance with** ~~rules to govern its proceeding in accordance with the provisions of this ordinance and the provisions of RSA 673, as may be hereafter amended.~~

Amendment No. 15:

Shall the Town amend the Town's Zoning Ordinance, as proposed by the Planning Board as follows?

To add the following words to Article 6.1.8 "pursuant to RSA 676:3" to the last sentence.

Purpose: This amendment is proposed by the Zoning Board of Adjustment as a house cleaning item. The proposal would add the following words that are in bold print to the existing article, so the article would read as follows)

- 6.1.8 PROCEDURE: The Zoning Board of Adjustment shall utilize the procedures as provided for in RSA 676:5 and RSA 676:7. The board shall be required to record their findings or reasons for granting or refusing to grant a variance or special exception, **pursuant to RSA 676:3.**

Amendment No. 16:

Shall the Town amend the Town's Zoning Ordinance, as proposed by the Planning Board as follows?

To change Article 6.1.9 as follows: to delete the words "as long as" and replace with the word "whenever".

Purpose: This amendment is proposed by the Zoning Board of Adjustment as a house cleaning item. The proposal would add the following words that are in bold print and eliminated the words with the strikethrough to the existing article, so the article would read as follows)

- 6.1.9 A variance will become void if active and substantial development of the use allowed by the variance is not undertaken within a 2 year period. Upon application by the property owner, the zoning board shall grant a one-year extension to the variance ~~as long as~~ **whenever** circumstances have not changed to the point where the variance would no longer be warranted. There is no limit to the number of extensions available, however the application for extension must be made prior to the expiration of the variance.

Amendment No. 17:

Shall the Town amend the Town's Zoning Ordinance, as proposed by the Planning Board as follows?

To amend the Article 4, the definition of Plat to read: “A plat for the purpose of this section shall be a map of a specific land area whose boundaries are defined by metes and bounds.”

Purpose: This amendment is proposed by the Planning Board as a house cleaning item. The State of NH Surveyors Association sent this wording change and stated that it needs to be made in the zoning ordinance as well as the subdivision regulations. The proposal would add the following words that are in bold print and eliminated the words with the strikethrough to the existing article, so the article would read as follows)

PLAT: ~~Shall mean a final plat or plan approved by the Weare Planning Board.~~ **A plat for the purpose of this section shall be a map of a specific land area whose boundaries are defined by metes and bounds.**

Amendment No. 18:

Shall the Town adopt the provisions of NFPA 13, NFPA 13D & NFPA 13R relative to the installation standards for a residential/commercial fire suppression system?

Purpose: Adoption of the NFPA is necessary as a standard for sprinkler fire suppression installations. The Board of Firewards is recommending the adoption of this standard and a change to the subdivision regulations to allow sprinklers in lieu of cisterns in certain situations. This does NOT have any effect on existing dwellings.

Amendment No. 19:

Shall the Town amend the Town’s Zoning Ordinance, as proposed by the Planning Board as follows?

To amend Article 6.1.5 to change the last sentence to read “pursuant to RSA 674:33” and delete the remainder including items a-e.

Purpose: This amendment is proposed by the Zoning Board of Adjustment as a house cleaning item. Upon advice from Town counsel, it was suggested that our ordinance not try to mimic the State law, but just reference it. The reason being is that if the State law changes, we don’t have to continually come back to the voters for approval of the change. The proposal would change the definition as follows (the bold is what is being added and the strikethrough words are being eliminated.)

6.1.5 VARIANCE: The Zoning Board of Adjustment shall hear and may grant variances to this or any other land use ordinances. Variance shall mean such departure from the terms of the zoning ordinance as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. Pursuant to State law the following five (5) points of hardship must be proven by the applicant and a vote in the affirmative to warrant granting of a variance, **pursuant to RSA 674:33.**

- ~~a. That there **will not** be a diminution of value of surrounding properties as a result of the granting of this variance because:~~
- ~~b. That the granting of this variance **will not** be contrary to the public interest because:~~
- ~~c. That the enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - ~~1) As applied to the petitioner's property will interfere with the petitioner's reasonable use of their property, considering the unique setting of the property in its environment for the following reasons;~~
 - ~~2) As specifically applied to the petitioner's property has no fair and substantial relationship to the general purposes of the zoning ordinance for the zoning ordinance for the following reasons; and~~
 - ~~3) If relieved by a variance, will not injure the public or private rights of others for the following reasons;~~~~
- ~~d. That by granting this variance, substantial justice **will** be done because:~~
- ~~e. That the use contemplated by the petitioner as a result of obtaining this variance **will not** be contrary to the spirit of the ordinance because:~~

Amendment No. 20:

Shall the town adopt a growth management ordinance, to be Article 33, in order to establish a rate of residential growth that allows the town the ability to provide needed municipal services, especially schools, in an orderly, predictable manner without unnecessarily overburdening its taxpaying citizens? (By Petition)

ARTICLE 33

Section 33.1: AUTHORITY AND PURPOSE

This article of the zoning ordinance is enacted under the authority of RSA 674:22. It is intended to manage the timing of development in accordance with the objectives of both the Master Plan and the Capital Improvements Program adopted by the Planning Board. The two documents assess and balance the community development needs of the town and consider regional development needs. More specifically, the purposes of this are as follows:

- (a) Promote the development of an economically sound and environmentally stable community, which considers and balances regional development needs.
- (b) Determine, monitor, evaluate, and establish a rate of residential growth in Weare that does not unreasonably interfere with Weare's capacity for planned, orderly, and reasonable expansion of its services to accommodate such growth.
- (c) Prove a temporary mechanism to allow for phased development of residential projects to manage the impact on municipal services.

- (d) Provide a temporary mechanism when municipal services are strained or overloaded to reduce the rate of residential growth and thereby allow Weare time to correct any deficiencies that have developed.
- (e) Protect the health, safety, convenience, and general welfare of the Town's residents.
- (f) Manage orderly growth in Weare in coordination with the Weare Master Plan and Weare Capital Improvements Program.
- (g) Provide that property owners, in developing their property, have the schools, roads, police and fire protection and other public services such development requires.
- (h) And, overall, establish a maximum growth rate for new residential construction similar to that of the surrounding region to allow Weare time to plan for and implement capital facility expansions to support such growth in an orderly fashion.

Section 33.2 FINDINGS

Population Figures

Weare's population has been growing at a rate faster than its abutting towns.

- A. Weare's average population growth rate from 1990 to 2000, the last census period, was 25.56% or an average population growth rate of 2.56% per year. [Data source: U.S. Census]. During the same period, our region (abutting towns) had an average population growth rate of 17.38% or an annual average population growth rate of 17.4%. This compares to an overall growth rate of 13.4% for Hillsborough County and 14.9% for the Southern NH Planning Commission (SNHPC) region. Therefore, Weare grew 47% faster than the average of our abutting towns, 91% faster than Hillsborough County and 72% faster than SNHPC region.
- B. Between 1950 and 1960 Weare's population grew at a relatively modest rate of 5.6% per decade. Between 1960 and 1970, Weare's population increased 30.4%. Between 1970 and 1980, Weare's population increased nearly 75%. Between 1980 and 1990, the Town's population increased 91.6%. Between 1990 and 2000, Weare's population increased 25.6%, and additional 1,583 people. Weare's population has grown as follows: in 1950, it was 1,345; in 1960, it was 1,420; in 1970 it was 1,851; in 1980 it was 3,232; in 1990 it was 6,193; in 2000, it was 7,776.
- C. According to the US Census Bureau, the Town of Weare is ranked 44th highest among all the 234 municipalities within New Hampshire in terms of total population size of 7,776.
- D. Using the 2000 census data, the SNHPC population projection to the year 2020 for Weare is estimated at 10,440 people. Using the 2000 census data (based on traffic zones), the estimated population for Weare in 2020 could be

11,828 people. Using census data showing the growth rate from between 1990 and 2000 (2.56%), the estimated population in 2020 could be 11,757 people. Using the average of 2001 and 2002 growth rate (2.8%), the estimated population in 2020 could be 12,130 people.

- E. Weare has been growing at a rate of between 2.6% and 2.9% per year between 2000 and 2002. Applying this rate of growth forward, it can be estimated that Weare's population would equal approximately 10,200 people by the year 2010, which is a 31% increase in population for the ten year period.

Potential new dwelling units

Existing housing lots, in any given year, are available for permits, possibly creating an unpredictable spike in growth.

- F. As of November 2003, the Town of Weare had an inventory of 998 vacant housing lots.

Building growth

Weare's recent building growth, as measured by the issuance of building permits for residential dwelling units, is greater than it was in the previous decade. It is also greater than its region's recent growth (abutting towns).

- G. In Weare, between 1990 and 2000 the construction of new year-round housing units increased by 411 units from a total of 2,417 units in 1990, to a total of 2,828 units in 2000 (US Census). This represents a building growth increase of 17% or an average building growth rate of 1.7% per year.
- H. During the 1990 and 2000 census period, our region (abutting towns) had an average building growth rate of 17% or an annual average building growth rate of 1.7%.
- I. During 2001 Weare's building growth rate increased to 2.8% (based on 80 permits), in 2002 to 2.3% (66 permits), and in 2003 up to 2.9% (90 permits). That's an average of 79 permits per year (2001-2003); up from an average of 41 permits (1990-2000), and represents a 93% increase in the number of permits per year.
- J. During 2001-2003 Weare's average annual building growth rate was 2.7%, while our region's average building growth rate was 2.1% during the same period. That means Weare was growing 30% faster than our region.

Schools

Weare's schools needs time to catch up with our population, subdivision and building growth.

(Data from SAU #24 reflects grades 1 – 12, including kindergarten and preschool.)

- K. The total capacity of the Center Woods Elementary School (“CWES”) at 90% Utilization Rate is 581 students, and a Gross Capacity Rate of 639 students (this includes Grades 1-4, kindergarten and preschool); the total school enrollment for the 2003 school year was 677 students. At 90% Utilization Rate, CWES exceeds capacity by 96 students and at a Gross Capacity Rate by 38 students. CWES school enrollment for 2004 is 646 students, at 90% Utilization Capacity Rate, CWES exceeds capacity by 65 students and at Gross Capacity Rate by 7 students. CWES has been over 90% Utilization Capacity Rate for seven plus years (7+yrs) and over Gross Capacity Rate for three plus years (3+yrs).
- L. The total capacity of the Weare Middle School (“WMS”) (Grades 5-8) at 85% Utilization Rate is 477 students and a Gross Capacity Rate of 548 students; the total school enrollment for 2003 and 2004 school years is 606 students. At 85% Utilization Rate WMS exceeds capacity by 129 students and at Gross Capacity Rate by 58 students. WMS has been over 85% Utilization Capacity Rate for eight plus years (8+yrs) and over Gross Capacity Rate for six plus years (6+yrs).
- M. The total capacity of the John Stark Regional High School (“JSRHS”) (Grades 9-12) at 80% Utilization Rate is 1,269 students and a Gross Capacity Rate of 1,586 students; the total school enrollment for 2002 school year was 827 students, 2003 enrollment was 872 students and 2004 enrollment of 909 students (of which approximately one third of the students are from Henniker enrolled at JSRHS).
- N. The Weare School Board commissioned a study of the Weare Middle School in 2003, which concluded that the school is deficient in many capacities, most notably in overcrowding and providing a healthy environment. The board is currently planning for a new 800 – 1,000 student middle school. At the earliest time frame the new school would not be opened before the fall of 2006 and based on other town's experiences might not be open before fall 2009. If annual growth in dwelling units is limited to the 1.7% average of the last decade, a new middle school may meet school district needs through the 20-year life of its bond; if unlimited, and it increases at the 2.7% average of the past three years, a second middle school is more likely to be required before the town has finished paying off the bond on the first school. This would impose an unreasonable tax burden on the town. The problem is compounded by the limited capacity and need for expansion of the elementary school in the near future and the high schools in the not too distant future.

- O. In addition to a new middle school now, the town must soon increase the capacity of its elementary school. From enrollment 2001 through enrollment 2004, CWES at 90% Utilization Capacity Rate has been an average of 79 students over capacity and at Gross Capacity Rate has been an average of 21 students over capacity.
- P. Weare has struggled to meet the growing demand placed on its schools by the rapid increase in population. Improvements to the Weare School System buildings in the last 10 years include construction of a 10,000 square foot addition to the John Stark Regional High School. Many other improvements and expansions have taken place at all three schools to address issues of health and overcrowding.

Section 33.3: APPLICABILITY

- A. This article applies to building permits for new residential dwelling units on all existing or new lots except as follows:
 - A.1 Lots in subdivisions approved prior to the effective date of this article that meet the requirements of RSA 674:39 are exempt from the provisions of this article for the statutory period.
 - A.2 Lots approved by the Planning Board in accordance with phasing plans in effect for subdivisions approved prior to the effective date of this article are, subject to article 15.1.2 and the other articles of this ordinance, exempt from the provisions of this article.
- B. This article does not apply to non-residential building permits or permits for expansion or the alteration of existing structures as long as there is no increase in the number of dwelling units other than accessory attached apartments by special exception pursuant to article 19.1.10 of this Zoning Ordinance.

Section 33.4: BUILDING PERMIT ANNUAL LIMITATION

- A. Based on the findings in section 33.2, and in particular sections 33.2.G, H, and N, the number of building permits for new dwelling units that are issued in a calendar year by the Town of Weare shall be limited to an amount that is one and seven tenths percent (1.7%) of the total dwelling units (TDU) existent in Weare as of December 31 of the prior year, rounded to the nearest whole number. This limitation is based on Weare's dwelling unit growth rate over the last decade and is intended to allow time for Weare to plan, finance and construct, among other things, the larger school capacity necessary to serve its growing student population.
- B. For the purposes of this ordinance, the December 31 base of dwelling units shall be determined from the 2000 United States Census, updated with Weare's building permit data. For the year 2005, the December 31, 2004, base of dwelling units is 3,124 and the annual 1.7% limitation is 53 permits.

Annually, thereafter, this number shall be increased based on such building permit data.

- C. By January 15 of each year this ordinance is in effect, the Planning Board shall post the annual limitation to be effective in that year.

Section 33.5: ISSUANCE OF BUILDING PERMITS

- A. The town shall issue building permits for new dwelling units on a “first-come, first-serve” basis, subject to the limitations set forth herein, which are designed to promote fairness.
- B. Application: The lot owner of record, or his or her representative, may apply for a building permit for a dwelling unit at any time. The town shall maintain a waiting list of all applications, and applicants shall be placed on a waiting list in chronological order, based on the date and time of filing of the completed application with the Building Inspector. Lots must meet all applicable state and local regulations.
- C. Issuance Dates: The Town shall begin issuing building permits for new dwelling units as soon after January 15 as possible.
- D. Reserved for Homeowner and Developers: Notwithstanding the “first-come, first-serve” policy, 30% percent of the available permits, rounded to the nearest whole number, shall be reserved for those who request only one building permit in a calendar year for a structure to be their residence (“homeowner permits”). The balance of the available permits shall be reserved for those who request more than one building permit in a calendar year for single family housing, for multi-family housing and for bona fide permanent affordable housing.

D.1 Building permits issued for lots in subdivisions that are exempt from this article under section 33.3.A.1 and 33.3.A.2 (“exempt lots”) shall be deducted from the available building permits in the respective homeowner or developer category. If such a deduction reduces the remaining permits to zero or less, no further building permits in that category may be issued in that calendar year for non-exempt lots, and the negative number shall be subtracted from the number of permits available in that category in the following year. This shall not affect the continued issuance of building permits for exempt lots.

D.2 The Planning Board may, at any time during the calendar year for the remainder of the calendar year, reduce or increase the percentage of available permits reserved for homeowners or developers if, after a public hearing, it determines that such change would maximize the number of permits issued within the limitation imposed by section 33.4B.

D.3 For purposed of this article, “subdivision” means a subdivision approved by the Planning Board.

D.4 Notwithstanding the provisions of this section 33.5, up to five (5) building permits issued in any calendar year for lots in each subdivision approved after the effective date of this article and restricted to persons over 60 years of age (“elderly housing”) shall not be deducted from the available building permits.

- E. Equitable Distribution: In order to assure equitable distribution of available developer permits, no single individual, whether he or she applies as an individual and/or as or through a partnership, corporation or other entity, shall be issued building permits for more than five (5) new dwelling units during a calendar year. However, after December 1 of each year, any unissued developer permits may be issued to such individual, partnership, corporation or other entity on an equitable basis if there are no applicants on the developer permit waiting list.
- F. Transferability: A residential building permit issued under this ordinance shall be valid only for the site specified on the permit application and may not be transferred to another lot. Should the property be conveyed, the permit shall be transferred to the new owner, but the expiration date shall remain unchanged.
- G. For the purposes of this ordinance, one building permit shall be required for each dwelling unit (e.g one permit for a single family home, two permits for a duplex, etc.).

Section 33.6: CARRY FORWARD OF UNISSUED PERMITS

If on December 31 of any year there remain unissued homeowner permits or there remain unissued developer permits, those unissued permits shall be added to the number of permits in their respective category as calculated under sections 33.4 and 33.5 for the following calendar year and issued only after that year’s permits have been exhausted.

Section 33.7: UNUSED PERMITS

Permits issued shall expire and be returned to the pool of available permits if substantial construction on the dwelling has not begun within one (1) year of issue unless renewed. Site preparation work shall not be considered substantial construction.

Section 33.8: SUBDIVISIONS

- A. The Planning Board may approve revisions to a subdivision plan approved prior to the effective date of this article, and such approval shall not affect the status of such subdivision under the provisions of RSA 674:39, provided that

any such approval does not result in an increase in the number of dwelling units.

- B. Notwithstanding the provisions of article 15: Phasing of Development, the number of lots in a subdivision approved hereafter by the Planning Board, other than in an elderly housing subdivision described in Section 33.3.A.3, shall not receive final plat approval for more than five (5) lots in any twelve-month period.

Section 33.9: ADMINISTRATIVE PROCEDURES

The Planning Board, after consultation with the Building Inspector and the Board of Selectmen, is hereby authorized to establish administrative procedures necessary to implement this article.

Section 33.10: EXCEPTIONS

In the event of damage, destruction, or demolition of any dwelling, the dwelling may be rebuilt, and as long as there is no increase in dwelling units, any building permit required for such rebuilding shall be exempt from this article.

Section 33.11: CONFLICTS

In matters governed by this ordinance, this ordinance shall supersede conflicting local ordinances and regulations.

Section 33.12: SEVERABILITY

Should any part of this ordinance be held invalid or unconstitutional by a court, such holding shall not affect, impair or invalidate any other part of this ordinance, and to such end, all articles, sections and provisions of this ordinance are declared to be severable.

Section 33.13: SUNSET

The Planning Board shall on or before September 1 of each year consult with the Weare School Board on the capacity of both the Weare elementary school and Weare middle school. If after such consultation, the Planning Board determines that pupil enrollment in each school is less than 90% capacity, it shall so certify to the Board of Selectmen, and this article shall expire at the end of the town meeting occurring after the date of such certification. In any event, this article shall expire at the end of the 2012 annual town meeting.

The Planning Board shall also monitor growth in the schools, the town and the region on a regular basis and notify the town of its findings.

Purpose: This article is a petition warrant article submitted by the required number of residents to be put on the ballot.

Amendment No. 21:

In order to preserve open space and our rural character, shall the Town amend its Zoning Ordinance (1) to increase the minimum lot size on future lots in the rural agricultural district from the current two acres to a minimum of five acres, (2) to increase its minimum frontage requirements in the rural agricultural district from the current 200 feet to 300 feet, and (3) to increase the minimum lot size on future lots in the rural conservation overlay district from the current four acres to ten acres, as follows: (1) amend Article 14 by adding section 14.3: "In the rural agricultural district, the minimum lot size in Table 1-1 shall be 217,800 square feet,"; (2) amend Article 14 by adding section 14.4: "In any case where the provisions of this ordinance impose conflicting minimum lot sizes or minimum frontage requirements, the higher minimum shall be the requirement, provided, however, that this shall not apply to minimum frontage requirements in cluster housing,"; and (3) amend 18.2.1 by adding a new sentence; "Notwithstanding the foregoing, all lots in the rural agricultural district must have a minimum frontage of 300 feet?" (By Petition)

Purpose: This article is a petition warrant article submitted by the required number of residents to be put on the ballot.